IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7649 of 1988

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIVISIONAL CONTROLLER

Versus

CHHATRASINH HIRABHAI PARMAR

Appearance:

MR KN RAVAL for the Petitioner.

MR HARDIK C RAWAL for the Petitioner.

(MR HK RATHOD) for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/12/2003

ORAL JUDGEMENT

1. By filing this petition, the petitioner-Corporation has challenged the Award passed by the Presiding Officer, Labour Court, Vadodara, dated

16.1.1988, in Reference (LCV) No.691 of 1984. By the impugned order, the Labour Court has set aside the action of the S.T. Corporation, by which the name of the concerned workman was removed from the waiting list.

2. The respondent was working as a Conductor at the relevant time. He was serving as a Conductor in the Baroda Division and he was subjected to departmental enquiry for not issuing tickets to certain passengers. By virtue of the aforesaid misconduct, his name was removed from the waiting list and, thereafter, he was not permitted to resume his duty. The concerned workman has challenged the said decision by raising an Industrial Dispute, which was referred to the concerned Labour Court, for adjudication. The concerned Conductor was on duty on the relevant day, i.e. on 13.8.1983, and at that time, three Inspectors of the Corporation, without disclosing their identity, were travelling in the said bus. They paid Rs.1/- in all for the purpose of purchasing the tickets, but the respondent-Conductor did not issue any ticket. In view of the complaint of the aforesaid three Inspectors, ultimately, the name of the respondent was removed from the waiting list.

After considering the evidence on record, the Labour Curt came to the conclusion that the Conductor had issued tickets to 55 passengers in the bus. The Labour Court came to the conclusion that there was no mens rea on the part of the Conductor and, by oversight, he had not issued tickets of Rs.1/-, though, according to the Labour Court, there was no intention for misappropriating any amount. The Labour Court found that the concerned workman was serving as a Badli Conductor and he committed mistake and considering the said aspect, the Court, ultimately, exercised powers under Section 11-A of the Industrial Disputes Act. The Labour Court also found that the fare which was required to be paid by the aforesaid three Inspectors was Rs.1.50, yet, they gave only Rs.1/-. Considering the totality of the facts and circumstances of the case, ultimately, the Labour Court exercised powers under Section 11-A of the Act and set aside the order of removal of the name of the respondent from the waiting list. The said order is impugned at the instance of the S.T. Corporation.

3. At the time of admitting this matter, this Court has not granted any interim relief as the concerned workman was already reinstated in service since March, 1988 and in that view of the matter, it is presumed that the respondent must have continued in service by virtue of the order of the Labour Court. Considering the fact

that the matter is of 1988 and the concerned workman is already reinstated in service since Mach, 1988, it would not be proper now to set aside the order, by which the name of the concerned workman was restored in the Waiting List. Though, of course, the reasoning of the Labour Court is not very satisfactory, the order, in so far as it restores the name of the respondent in the waiting list, is not required to be disturbed after such a long time, especially when the Corporation has approached this Court after implementing the order of the Labour Court in question. However, considering the fact that it has been found that the misconduct, as such, is proved against the concerned workman, in my view, the Labour Court, while exercising the powers under Section 11-A of the Act, should have imposed some penalty. Under the circumstances, the order of the Labour Court is modified and a punishment of withholding of one increment with future effect is imposed on the workman. Rest of the order of the Labour Court is confirmed. Accordingly, the petition is partly allowed. Rule is made absolute accordingly. No order as to costs.

12th December, 2003 (P.B. Majmudar, J.)

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(apj)